

[Act 1996 No 93]



New South Wales

# Crimes Amendment (Apprehended Violence Orders) Bill 1996

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.\*

### Overview of Bill

The object of this Bill is to amend the *Crimes Act 1900* and the *Director of Public Prosecutions Act 1986* to improve the apprehended violence order ("AVO") scheme. The major changes to the AVO scheme can be summarised as follows:

- (a) A court that convicts a person of a stalking or intimidation offence is required to make an AVO against the convicted person for the protection of the person against whom the offence was committed, unless the court is satisfied it is not required.
- (b) An AVO may prohibit or restrict the defendant's access to any premises occupied by the protected person or any place of work of the protected person from time to time. There is no need for the AVO to disclose the address of the protected person to the defendant.

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\* Amended in committee—see table at end of volume.

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- (c) A court that makes an AVO that does not prohibit or restrict access by the defendant to any premises or place is required, if such a prohibition or restriction was applied for, to give reasons for the decision not to make an AVO in those terms.
- (d) The circumstances in which a police officer must apply for an AVO are extended to include any circumstances in which the police officer believes a stalking offence has recently been or is being committed.
- (e) Proceedings for making a telephone interim order are changed to ensure that the interim order remains in force until the defendant appears before court for a hearing of a complaint against the defendant. However, the maximum duration of the telephone interim order will be 14 days.
- (f) A police officer who attends an incident that justifies the making of a telephone interim order is required to make an application for a telephone interim order in certain circumstances involving domestic violence or children under 16 years of age.
- (g) A court that makes or varies an AVO will be required to explain the effects of the order or variation to the defendant and the person protected by the order.
- (h) A court hearing AVO proceedings that relate to the protection of a child is given the power to hear the proceedings in the absence of the public.
- (i) The Director of Public Prosecutions is given the power to institute and conduct AVO proceedings on behalf of a complainant.

The above changes and other changes to the AVO scheme are explained in more detail in the notes relating to Schedules 1 and 2.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be proclaimed.

**Clause 3** gives effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

**Clause 4** gives effect to the amendment to the *Director of Public Prosecutions Act 1986* set out in Schedule 2.

## **Schedule 1      Amendment of Crimes Act 1900**

### **Stalking and intimidation**

**AVO against person convicted of offence.** The amendment to section 562AB (relating to the offence of stalking or intimidation) requires a court that convicts a person of an offence against that section to make an AVO against the person for the protection of the person against whom the offence was committed, as if a complaint for an order had been made. The court need not make an order if it is satisfied that it is not required. (See Schedule 1 [1] and [24].)

**Concurrent proceedings.** Section 562O, which requires a court that is dealing with a charge for a domestic violence offence to inquire whether a complaint for an order has been made, and to deal with such a complaint concurrently with the offence proceedings, is extended to apply to charges of stalking or intimidation under section 562AB of the Act. (See Schedule 1 [23])

**Circumstances in which police officer must apply for AVO.** Section 562C is amended to require a police officer to make a complaint for an order if the police officer suspects or believes that an offence against section 562AB has recently been or is being committed. (See Schedule 1 [6])

### **Restrictions on access by defendant to premises and places**

**Address of residence or place of work of protected person need not be disclosed.** Section 562D is amended to provide that an order may prohibit or restrict access by the defendant to premises occupied by the protected person, or any place of work of the protected person, from time to time. There is no need for the premises or place to be specified in the order. (See Schedule 1 [7] and [24])

**Reasons to be given for failure to prohibit or restrict access by the defendant to premises.** New section 562DA provides that if an application is made for an order that prohibits or restricts access by the defendant to premises or a place, and the court fails to include such a term in its order, the court must give reasons for that decision. (See Schedule 1 [8])

### **Telephone interim orders**

**Duration and effect.** At present, a telephone interim order remains in force (unless sooner revoked) for the period specified in the order. The period must be no longer than 5 working days after the order is made or 1 working day if the order restricts access to premises. As soon as practicable after the

telephone order is made the police officer who applied for the order (or some other police officer) must make a complaint for a court order in the matter or report to an authorised justice as to why such a complaint has not been made. The amendments to section 562H change this procedure. Under the new procedure an authorised justice who makes a telephone interim order is required to summons the person against whom the order is made to appear at an appropriate court for a hearing of the matter. There is no need for the police officer who applied for the order to make a complaint as the making of a telephone interim order acts as a complaint. The police officer will simply serve the interim order (which contains the summons) on the person against whom it is made. The hearing date for the complaint is to be specified by the authorised justice and is to be as soon as practicable after the interim order is made. The order remains in force for a maximum period of 14 days, or less if it is sooner revoked by an authorised justice or replaced by a court order against the defendant. (See Schedule 1 [13], [14], [15] and [24])

**Order prohibits stalking and intimidation.** Section 562H (4) is amended to make it a standard term of all telephone interim orders that the defendant is prohibited from stalking or intimidating the protected person. (See Schedule 1 [12])

**Defendant may be detained at police station.** At present a police officer who makes or is about to make an application for a telephone interim order may direct the person against whom the order is sought to remain at the scene of the incident concerned. If the person refuses to do so, the police officer may arrest and detain the person at the scene until the interim order is made and served. Amendments to section 562H (12) allow the police officer, if the person refuses to remain at the scene of the incident concerned, to arrest and take the person to a police station and there detain the person until the order is made and served. (See Schedule 1 [16])

**Order may prohibit persons between 16 and 18 years from entering premises.** Amendments to section 562H (15) allow a telephone interim order to include a term that prohibits or restricts access by the defendant to the protected person or to premises occupied by the protected person as long as the defendant is 16 years of age or older. At present such a prohibition or restriction cannot be made if the defendant is under 18 years. (See Schedule 1 [18])

**Circumstances justifying telephone interim order.** It is made clear that the circumstances in which a telephone interim order may be sought include where the police officer attending the incident concerned has good reason to believe that unless an order is made the person who would be protected by the order may suffer a personal violence offence. (See Schedule 1 [19])

**Circumstances in which police officer must seek telephone interim order.**

Section 562 (2A) requires a police officer attending an incident in circumstances that justify an application for a telephone interim order to apply for the order if the circumstances involve domestic violence or children. These circumstances are similar to the circumstances in which a police officer would be required to make a complaint for an apprehended violence order by a court. (See Schedule 1 [11] and [24])

**AVO proceedings**

**Explanation of order.** New section 562GC requires a court that makes an AVO to explain to the defendant and the person protected by the order the effect of the order, the consequences of contravention and the rights of both parties in relation to the order. Similar requirements are to apply if a court varies an AVO. (See Schedule 1 [10])

**Variation or revocation of AVO.** Amendments to section 562F allow a court to decline to hear an application for variation or revocation of an order if there has been no change in circumstances since the order was made and the court is satisfied that the application is in the nature of an appeal against the order. The object of this amendment is to prevent variation or revocation applications from becoming defacto appeals. (See Schedule 1 [9] and [24])

**Making of AVOs by District Court.** New sections 562GA and 562GB provide for the making of AVOs by the District Court. Section 562GA provides for rules for the making of complaints to the District Court for an AVO following a dismissal of a complaint by a Local Court or the Children's Court. Section 562GB makes it clear that the powers conferred on the District Court in relation to AVOs are conferred on the Court in its criminal jurisdiction. (See Schedule 1 [10] and [24])

**Proceedings concerning children can be heard in absence of public.** New section 562NA allows a court that is hearing proceedings for an AVO for the protection of a child under the age of 16 years to hear the proceedings in the absence of the public or in the absence of any specified member of the public. (See Schedule 1 [22] and [24])

**Age of protected person.** At present a court is not required to be satisfied, before making an AVO that the person for whose protection the AVO would be made in fact fears the commission by another person of an offence or other conduct that justifies the making of an AVO if the person in need of protection is under the age of 18 years. Amendments reduce this age to 16 years. (See Schedule 1 [2])

**Consent orders.** An amendment to section 562BA provides that a court that makes an AVO with the consent of the parties concerned may only hear evidence in relation to the subject of the complaint if the interests of justice require it to do so. (See Schedule [1] and [24])

### **Other miscellaneous changes**

**Pre-sentencing reports.** Section 562I is amended so that a court that decides to impose a sentence of imprisonment on a person for contravening an AVO is not required to consider a full psychiatric assessment or psychological assessment and pre-sentence report on the person before doing so. (See Schedule 1 [20])

**Summons or warrant must be issued on complaint.** Section 562K is amended to make it clear that an authorised justice who receives a complaint for an order must either issue a summons for the appearance of the person against whom the order is sought or issue a warrant for his or her arrest. The authorised justice does not have the discretion to reject a complaint that is duly made. (See Schedule 1 [21])

**Orders for the protection children.** Section 562BD is amended to make it clear that an order may be made for the protection of a child under the age of 16 years with whom the person for whose protection the order was applied for has a domestic relationship, even though a police officer did not make a complaint for the order. (See Schedule 1[5])

**Interim court orders.** Section 562BB is amended to require a court to summon a defendant against whom an interim order is made for a further hearing of the matter as soon as practicable (rather than as soon as possible) after the interim order is made. (See Schedule 1 [4])

**Savings, transitional and consequential amendments.** The Bill also contains savings, transitional and consequential amendments. (See Schedule 1 [17] and [24])

### **Schedule 2      Amendment of Director of Public Prosecutions Act 1986**

The amendment provides that the Director of Public Prosecutions may institute and conduct, on behalf of the complainant, AVO proceedings. The Director may also conduct, on behalf of the complainant as respondent, appeals in any court in relation to AVO proceedings.